

1 that issue through the normal course. You can  
2 ask him to produce FOIA, if it exists, but you  
3 can't ask --

4 MS. POLIVY: Hold on a second. I can  
5 ask it. Let me take --

6 MR. DZIEDZIC: There's no question  
7 pending.

8 MR. BLOCK: There is, actually.

9 MS. POLIVY: There is, actually.

10 MR. DZIEDZIC: What was the question?

11 MS. POLIVY: You've objected.

12 Whether he made a notation to the file that --  
13 regarding the ex parte contact.

14 (Discussion off the record)

15 MS. POLIVY: How do you want to  
16 handle this? There's a phone.

17 THE WITNESS: There's a phone right  
18 there.

19 MR. COLE: Let's go off the record.  
20 I was going to say, let's go off the record  
21 until we agree on how we're going to put the  
22 judge on the box and then go back on.

1 (Discussion off the record)

2 MR. COLE: Back on the record.

3 While Mr. Dziedzic is dialing the  
4 judge, off the record, the parties have agreed  
5 to a speakerphone procedure. The speakerphone  
6 has been moved to the center of the table.

7 Mr. Dziedzic is dialing the judge's  
8 number. And when the judge answers, we'll put  
9 it on the speakerphone and go on the record.

10 (Discussion off the record)

11 MR. COLE: Mr. Reporter, are you  
12 getting this down?

13 (Discussion off the record)

14 MR. COLE: I am sorry. We're now on  
15 the record.

16 (Discussion off the record)

17 MR. DZIEDZIC: Certainly. I'll let  
18 you take it, Margot.

19 JUDGE CHACHKIN: Hello?

20 MS. POLIVY: Hello, Judge. This is  
21 Margot Polivy.

22 JUDGE CHACHKIN: Yes.

1 MS. POLIVY: We're on a speakerphone  
2 here at the deposition of Roy Stewart.

3 JUDGE CHACHKIN: Oh, yes. Okay.

4 MS. POLIVY: And we have had a  
5 question posed and an objection raised to it.

6 JUDGE CHACHKIN: Yes.

7 MS. POLIVY: I have sought to ask Mr.  
8 Stewart whether he was aware of any memo  
9 written to the file as a result of the July 1  
10 meeting with Rainbow regarding an ex parte  
11 contact.

12 That objection has been made, and he  
13 has been directed not to answer. It is my  
14 position that we should be able to inquire as  
15 to any fact resulting at the meeting or from  
16 the meeting, and certainly as to whether or not  
17 there was a memorandum of ex parte contact or  
18 not.

19 JUDGE CHACHKIN: How is that  
20 relevant?

21 MS. POLIVY: Well, it's relevant to  
22 the question of whether there was an

1 intentional violation on the part of Rainbow  
2 because, first, it's relevant to whether there  
3 was an ex parte violation.

4 JUDGE CHACHKIN: Well, the Commission  
5 has already ruled there was an ex parte  
6 violation.

7 MS. POLIVY: Well --

8 JUDGE CHACHKIN: The only question  
9 is, is it intentional? As I indicated, that  
10 would be derived from the actions of Rainbow  
11 and its principals.

12 MS. POLIVY: Well, Your Honor, it  
13 would seem apparent that --

14 JUDGE CHACHKIN: Whether Mr. Stewart  
15 thought it was an ex parte violation is totally  
16 irrelevant to the issue.

17 MS. POLIVY: I think that it would go  
18 to the appropriateness of Rainbow's belief that  
19 it was not an ex parte violation.

20 JUDGE CHACHKIN: Not the  
21 appropriateness of Rainbow's belief. The  
22 appropriateness of Rainbow's belief will be

1 decided on the basis of Rainbow's actions.

2 MS. POLIVY: Your Honor, we've  
3 pointed out before that there is no law of the  
4 case regarding a violation here because Rainbow  
5 has never had the opportunity to be heard.

6 JUDGE CHACHKIN: I --

7 MS. POLIVY: And --

8 JUDGE CHACHKIN: That's something you  
9 could argue with the court, with the  
10 Commission, for reconsideration or what have  
11 you. The fact of the matter is, the issue only  
12 deals with whether Rainbow's action was --  
13 acted in a, you know, improper fashion. Not in  
14 a proper fashion. Willfully violated the ex  
15 parte rules.

16 MS. POLIVY: Well, Your Honor, we  
17 have asked under the Freedom of Information Act  
18 for any files, which have, as far as we know --

19 JUDGE CHACHKIN: The Commission  
20 indicated in their order allowing depositions  
21 of Commission employees that it specifically  
22 precluded any depositions dealing with the

1 internal actions of the Commission. I mean,  
2 that's what the Commission said.

3 Now, what you're attempting to do is  
4 look at Commission files dealing with the  
5 internal dealings of the Commission.

6 MS. POLIVY: No, Your Honor. We have  
7 not asked for -- the files are an entirely  
8 different matter. In the FOIA request there  
9 was no redaction. I am simply asking Mr.  
10 Stewart if he made such -- not what it was, but  
11 whether he made such a memo.

12 JUDGE CHACHKIN: The memo relating to  
13 what? Whether the action was ex parte or not?

14 MS. POLIVY: Yes, sir.

15 JUDGE CHACHKIN: Whether he  
16 considered the meeting to be ex parte?

17 MS. POLIVY: No, sir. Whether he  
18 made such a memo.

19 JUDGE CHACHKIN: As to what?

20 MS. POLIVY: As to whether he made a  
21 memo under the ex parte rules.

22 JUDGE CHACHKIN: Well, how is that

1 relevant? Whether he made a memo under the ex  
2 parte rules?

3 MR. EISEN: Your Honor, Bruce Eisen.

4 JUDGE CHACHKIN: How are you?

5 MR. EISEN: The way the Commission's  
6 order is written, it says, "Communications  
7 between bureau staff." I'm sorry. This would  
8 exclude questions concerning communications  
9 among bureau personnel.

10 I think Miss Polivy's question goes  
11 to a fact, is factual, and asks whether or not  
12 Mr. Stewart was aware of any such entry. I  
13 don't think that that's a communication among  
14 Commission personnel.

15 JUDGE CHACHKIN: Well, who did the  
16 communication go to?

17 MR. EISEN: I have no idea.

18 JUDGE CHACHKIN: Well, it was among  
19 Commission staff, wasn't it? Whether or not it  
20 was written or oral, it was a communication,  
21 and it seems to me clearly the Commission M&O  
22 bars any questions concerning any communication

1 in and among the Commission staff.

2 MR. EISEN: Well, I don't think that  
3 the question implies that there has necessarily  
4 been something that has happened between  
5 Commission staff persons.

6 JUDGE CHACHKIN: But what would be  
7 the purpose of whoever wrote this memo of some  
8 kind relating to the ex parte? Was it --  
9 whether he wrote an ex parte? Isn't that --

10 MR. EISEN: No. I think it's just a  
11 notation under the rule that requires a  
12 same-day entry into a file.

13 JUDGE CHACHKIN: But how is that  
14 relevant? Assuming he did, what -- assuming he  
15 didn't? What does that mean? How does that  
16 deal with the issue? How does that in any way  
17 shed light on the issue?

18 MR. EISEN: Because our position has  
19 been, and I know there has been disagreement  
20 with this position --

21 JUDGE CHACHKIN: Not only with me,  
22 but the commissioners also agreed that it



1 doesn't concern any internal actions of the  
2 Commission or any views of the Commission. It  
3 deals with the actions of Rainbow. What  
4 Rainbow did.

5 MS. POLIVY: Well, Your Honor, the  
6 question of intentional can only be determined  
7 in the context. If you're saying that the  
8 actions of no one else are relevant to  
9 determination of the reasonableness of  
10 Rainbow's belief, then, frankly, other than  
11 saying that Rainbow believed it, there would be  
12 no way of finding the issue in a negative.

13 MR. EISEN: See --

14 JUDGE CHACHKIN: Pardon me?

15 MS. POLIVY: Well, the issue says,  
16 did Rainbow intentionally violate?

17 JUDGE CHACHKIN: That's right.

18 MS. POLIVY: All right. One of the  
19 ways in which one demonstrates the  
20 reasonableness of intention is what other  
21 people believed as well.

22 JUDGE CHACHKIN: Reasonable --

1 MS. POLIVY: Excuse me.

2 JUDGE CHACHKIN: -- has nothing to do  
3 with intention. Intention has to do with what  
4 Rainbow had in mind.

5 MS. POLIVY: Then other than saying  
6 we did not intentionally violate --

7 JUDGE CHACHKIN: Well, that'll be  
8 based on the evidence that comes out from  
9 Rainbow's actions. It's communications. The  
10 reasons why it contacted particular  
11 individuals, the circumstances under which it  
12 contacted these individuals.

13 MS. POLIVY: Well, that doesn't  
14 make --

15 JUDGE CHACHKIN: That will determine  
16 the --

17 MS. POLIVY: The question of  
18 intention you're saying has to be determined  
19 only by what Rainbow said?

20 JUDGE CHACHKIN: And did.

21 MS. POLIVY: There's no dispute about  
22 what was done.

1 JUDGE CHACHKIN: But we're dealing  
2 with Rainbow; what Rainbow did, the actions  
3 Rainbow took, and the reasons why it took those  
4 actions. Now, that will determine whether it  
5 acted intentionally or not.

6 MS. POLIVY: Well, Your Honor --

7 JUDGE CHACHKIN: I don't see how  
8 anything that the bureau did internally, any  
9 internal discussions it had, any internal  
10 communications, written or oral, by and among  
11 itself, could have any bearing on Rainbow's  
12 actions, particularly if Rainbow specifically  
13 -- specifically if Rainbow was not aware of it.

14 MR. EISEN: I think we understand  
15 your position, Your Honor. And I think it's  
16 just something that we disagree with because  
17 you used an analogy at one of the conferences  
18 about body language.

19 JUDGE CHACHKIN: Pardon me?

20 MR. EISEN: You used an analogy at a  
21 hearing conference about body language, and you  
22 wondered whether or not if --

1 JUDGE CHACHKIN: I didn't use the  
2 word "body language." You raised body  
3 language.

4 MR. EISEN: Well, all right. It was  
5 raised.

6 JUDGE CHACHKIN: I didn't raise body  
7 language, believe me.

8 MR. EISEN: All right. The record  
9 will speak for itself.

10 The fact of the matter is that we  
11 feel that the staff could have taken certain  
12 positions with Miss Polivy that would have  
13 indicated its belief or lack of belief that  
14 this was an ex parte contact, that this was a  
15 violation. And I think that impacts upon the  
16 question of whether Miss Polivy or Rainbow  
17 Broadcasting Company intentionally violated the  
18 rule.

19 If the very agency that's charged  
20 with administering the rule acts in such a way  
21 that they believe there is no violation, then  
22 it seems to me there's a very good argument to

1 make that that has great relevance with regard  
2 to the intent.

3 JUDGE CHACHKIN: I don't see how that  
4 has any relevance. The fact the bureau may  
5 have been wrong doesn't change the fact that  
6 there was an ex parte violation. The  
7 Commission has ruled on that.

8 MS. POLIVY: If 50,000 people are  
9 wrong, I think doesn't it have a bearing on  
10 whether 50,000 maybe had a reasonable --

11 JUDGE CHACHKIN: Look, you can argue  
12 -- see, I see what the problem is here. You  
13 want to continue arguing that we're not dealing  
14 with whether or not it was intentional.

15 We're dealing with whether in fact  
16 there was an ex parte violation, and what I've  
17 said is that is not a question before the  
18 court. The Commission issue does not raise a  
19 question. There's no issue as to whether or  
20 not it was a violation.

21 The issue is whether or not it was an  
22 intentional violation. The Commission has

1 ruled. Now, you could take -- you could file  
2 an appeal at some point in time, if you are  
3 required to do so, arguing the Commission was  
4 wrong in its ruling that this was an ex parte  
5 violation, but that's not the issue before me.

6 The issue before me is whether it was  
7 an intentional violation, and any evidence  
8 which assists us in finding out whether it was  
9 an intentional violation is relevant.

10 Now, I don't see how any actions, any  
11 memos or oral communications by and between the  
12 staff which was not communicated to Rainbow,  
13 could possibly have a bearing upon Rainbow's  
14 intentions.

15 MS. POLIVY: Well, Your Honor, I  
16 assume, then, that what you're saying is that  
17 if such a memo existed, that it could not be  
18 introduced by anyone in the hearing,  
19 including --

20 JUDGE CHACHKIN: That has no bearing  
21 on the issue. It would have no bearing on the  
22 issue. The Commission has made that clear.

1 What has a bearing on the issue is what would  
2 shed light on whether Rainbow acted  
3 intentionally or not.

4 MS. POLIVY: Well, Your Honor, I --

5 JUDGE CHACHKIN: I --

6 MS. POLIVY: -- accept your ruling.  
7 I disagree.

8 JUDGE CHACHKIN: Of course you  
9 disagree, but I say, your argument is not with  
10 me. It's with the Commission. It isn't  
11 necessary for you to go that far because you're  
12 still arguing, as you did the first day of the  
13 conference, your belief that it was not an ex  
14 parte violation.

15 MS. POLIVY: And we will the last day  
16 of the conference.

17 JUDGE CHACHKIN: And I expect you  
18 will, if necessary, but that's not before me.  
19 That's not the issue before me.

20 MS. POLIVY: We and 50,000 others,  
21 Your Honor, but I accept your ruling.

22 JUDGE CHACHKIN: Fine.

1 MR. EISEN: Thank you, Your Honor.

2 MR. DZIEDZIC: Thank you very much,  
3 Your Honor.

4 JUDGE CHACHKIN: All right.

5 MS. POLIVY: Thank you for being so  
6 patient. I have no further questions. You're  
7 not finished. It's their turn --

8 THE WITNESS: Okay. Who is "they"?

9 MR. MOSKOWITZ: I have no questions.

10 MR. BLOCK: I'm Stuart Block with the  
11 separate trial staff, and with me is David  
12 Silverman. We have no questions.

13 (Whereupon, at 10:20 a.m., the  
14 deposition of ROY STEWART was  
15 adjourned.)

16 \* \* \* \* \*

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1 CERTIFICATE OF NOTARY PUBLIC

2 DISTRICT OF COLUMBIA

3  
4 I, Thomas R. Brezina, the officer before whom  
5 the foregoing deposition was taken, do hereby certify  
6 that the witness whose testimony appears in the  
7 foregoing pages was duly sworn; that the foregoing  
8 transcript is a true and accurate record of the  
9 testimony given by said witness.

10 I further certify that I am not related to  
11 the witness or counsel; that I have no interest in  
12 the outcome of this case.

13 Given under my hand this 13<sup>th</sup> day of May  
14 1996.

15  
16   
17 NOTARY PUBLIC

18  
19  
20 My Commission Expires:  
October 14, 1998  
21  
22

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AUG 14 1996

Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF SECRETARY

In re Applications of )  
RAINBOW BROADCASTING COMPANY ) GC Docket No. 95-172  
For an extension of time ) File No. BMPCT-910625KP  
to construct ) File No. BMPCT-910125KE  
and ) File No. BTCCT-911129KT  
For an Assignment of its )  
construction permit for )  
Station WRBW(TV), Orlando, Florida )

TO: The Honorable Joseph Chachkin  
Administrative Law Judge

PRESS BROADCASTING COMPANY, INC.  
HEARING EXHIBIT

NO. 19

Transcript of Deposition  
of Roy J. Stewart  
conducted May 23, 1996

Federal Communications Commission	
Docket No. <u>GC-95-172</u>	Exhibit No. <u>19</u>
Presented by <u>Harry Cole, ESO.</u>	<u>Press</u>
Disposition	Identified <u>X</u>
	Received <u>X</u>
	Rejected
Reporter <u>Patterson, Perry</u>	
Date <u>7/11/96</u>	

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AUG 14 1996

BEFORE THE FEDERAL COMMUNICATIONS COMMISSION  
WASHINGTON, D.C.

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF SECRETARY

----- x  
:  
IN RE: Applications of : GC Docket No.  
Rainbow Broadcasting Company : 95-172  
for an extension of time to : File Nos.  
construct and for an assignment : BMPCT-910625KP  
of its construction permit for : BMPCT-910125KE  
Station WRBW (TV), Orlando, : BTCCT-911129KT  
Florida. :  
:  
----- x

Washington, D.C.

Thursday, May 23, 1996

Deposition of

ROY STEWART

a witness of lawful age, taken on behalf of  
Press Broadcasting Company, Inc., in the  
above-entitled action, before Thomas R.  
Brezina, notary public in and for the District  
of Columbia, in the offices of the Federal  
Communications Commission, 1919 M Street, Room  
314, Washington, D.C., commencing at  
9:28 a.m., when were present on behalf of the  
following parties:

**BETA**

A Full Service Reporting Company

(703) 684-BETA

## 1 APPEARANCES:

2 On behalf of Rainbow Broadcasting Company,  
3 Inc.:

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10 On behalf of Rainbow Broadcasting, Ltd.:

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15 (202) 265-1807

16 On behalf of Press Broadcasting Company, Inc.:

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22 On behalf of FCC:

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On behalf of Witness:

CHARLES DZIEDZIC, ESQUIRE  
Federal Communications Commission  
1919 M Street, N.W., Room 712  
Washington, D.C. 20554  
(202) 418-1604

ALSO PRESENT: Mr. Joseph Rey

\* \* \* \* \*

## C O N T E N T S

EXAMINATION BY:

PAGE

Counel for Press Broadcasting

5

Counsel for Rainbow Broadcasting, Ltd.

16

\* \* \* \* \*

## P R O C E E D I N G S

Whereupon,

ROY STEWART

was called as a witness and, having been first  
duly sworn, was examined and testified as  
follows:

EXAMINATION BY COUNSEL FOR PRESS

BROADCASTING COMPANY, INC.

BY MR. COLE:

Q Good morning, Mr. Stewart. Could you  
state your name and position for the record.

A My name is Roy Stewart, and I'm chief  
of the mass media bureau of the Federal  
Communications Commission.

Q And what is your office address?

A 1919 M Street, Northwest, Washington,  
D.C. I think the room is 314.

Q Thank you, sir.

Mr. Stewart, we appreciate your  
taking the time out of your schedule to do  
this, and we're going to try to make it as  
quick as possible. And certainly, based on Ms.

1 Kreisman's deposition, it should go very  
2 quickly. If you have any questions,  
3 clarifications, or requests for further  
4 information, please don't hesitate to ask.  
5 We'll try to make sure that all the questions  
6 are clear for you before you have to answer  
7 them.

8 How long have you been chief of the  
9 mass media bureau?

10 A Let's see. Since October 1989.

11 Q And how long have you been at the  
12 FCC?

13 A Oh, probably close to 30 years now.

14 Q All right. And you're an attorney by  
15 training?

16 A Yes, I am.

17 Q Sir, the hearing in connection with  
18 which we're conducting this deposition includes  
19 in its caption three applications filed by  
20 Rainbow Broadcasting Company. And I'll refer  
21 to that as RBC occasionally just for  
22 convenience's sake.



1           Those applications include two  
2           applications for extension of RBC's  
3           construction permit for Channel 65 in Orlando  
4           and one application for consent to the  
5           assignment of that permit.

6           Are you generally familiar with those  
7           applications?

8           A     Just in the general sense. I've  
9           never looked at the applications' content.

10          Q     I'm not going to ask questions about  
11          the substance. I just want to orient you to  
12          what we're talking about here.

13          Sir, during the period of time  
14          January 1991, which is when the first of those  
15          captioned applications was filed, through July  
16          of 1993, did you have any oral communications  
17          with anyone acting on behalf of RBC with  
18          respect to any RBC application which was  
19          pending before the bureau at the time of the  
20          communication?

21          A     The July '93 date, is that the date  
22          that the outstanding letter had been sent out